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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,049	06/25/2003	James Pruett	9251-2	3803
20792	7590	04/03/2006		
MYERS BIGEL SIBLEY & SAJOVEC PO BOX 37428 RALEIGH, NC 27627			EXAMINER LHYMN, EUGENE	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 04/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/606,049

Applicant(s)

PRUETT, JAMES

Examiner

Eugene Lhymn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 9-15 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-15 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 5, 9-13, 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Lamora (US 5752439). With respect to claim 1, LaMora discloses the following:

- A container with sidewalls (Fig. 1), an open top end (Fig. 1), the sidewalls including engagement portions (42)
- A frame having a base (62), plurality of uprights (32), roof supported by uprights (52), storage cavity
- The container being configured to pass through open side of frame (Fig. 1)

With respect to claim 2, Lamora discloses the frame comprising four uprights (32).

With respect to claim 3, Lamora discloses the roof including a sloped front panel (Fig. 1, the sloped portion adjacent door 58).

With respect to claim 5, Lamora discloses the roof being adapted to receive a trash chute (Col 6, Lines 55-60).

With respect to claim 9, Lamora discloses the engagement locations being configured to receive a prong (42).

With respect to claim 10, Lamora discloses the engagement locations being channels (42).

With respect to claim 11, Lamora discloses the frame having side rails (64) mounted to the base (62),

With respect to claim 12, Lamora discloses the side rails including stops at their rearward ends (Fig. 5).

With respect to claim 13, Lamora discloses the side rails being inwardly offset from the frame uprights (Fig. 5).

With respect to claim 21, Lamora discloses the following:

- A container with sidewalls (26), and open top end, the sidewalls including engagement locations, the container having a volume between about four and ten cubic yards (Col 9, Lines 45-50).
- A frame comprising a plurality of uprights (32, 34) mounted with a base (62), two of the uprights being separated from each other to define an open front side
- A roof supported by uprights (52)
- Base, uprights, and roof defining a storage cavity (Fig. 1)
- Container resides in storage cavity, and the roof covers the open top end of the container, the container passes through the open front side of the frame (Fig. 1)

3. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Burdett (US 3428245). With respect to claim 1, Burdett discloses the following:

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- A container with sidewalls (33), an open top end (33, wherein the container has an intrinsically open end that is covered with a lid), the sidewalls including engagement portions (handles on sidewall as shown in Fig. 2)
- A frame having a base (12), plurality of uprights (13, 14), roof supported by uprights (16), storage cavity
- The container being configured to pass through open side of frame, wherein the open side of the frame is defined by gate 11 which delimits an intrinsic open side of that frame that the container passes through

With respect to claim 2, Burdett discloses the frame comprising four uprights, wherein each upright is a vertically extending corner, as shown in Fig. 1, wherein there are clearly four uprights.

With respect to claim 3, Burdett discloses the roof being sloped front panel(Fig. 1).

With respect to claim 4, Burdett discloses the front panel having a door (17).

With respect to claim 5, Burdett discloses the roof being adapted to receive a chute. Furthermore, the initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Burdett, which is capable of being used in the intended manner, i.e., being adapted to receive an external trash chute (see M.P.E.P. 2111).

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 6, 7, 14, 15, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burdett in view of Lewis (US 3309160). With respect to claim 6, Burdett discloses the claimed invention except for the container having a front wall having a door. However, Lewis teaches a refuse container having a front door, thereby providing additional access means to the inner contents of the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Burdett to have a door as taught by Lewis so as to provide additional access means to the inner contents of the container.

With respect to claim 7, Lewis discloses the front wall door including a lock.

With respect to claim 14, Burdett discloses the claimed invention except for the container including feet underneath the floor of the container. However, Lewis teaches the container including a floor (Col. 2, Lines 28-29) and feet being mounted underneath the floor (Fig. 1 item 34), thereby providing additional support for the container.

Therefore, it would have obvious to one of ordinary skill in the art at the time of the invention to add feet underneath the floor of the container of Burdett as taught by Lewis so as to provide additional support for the container.

With respect to claim 15, Burdett discloses a container system having a container-roof vertical distance, as shown in Fig. 4. However, Burdett does not teach the gap being between about 1 and 4 inches. Nonetheless, it would have been an obvious matter of design choice to design the container to have an appropriate size so as to render the aforementioned range, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

With respect to claim 21, Burdett discloses the claimed invention except for the volume being 4-10 cubic yards. It would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the volume as such since it has been held that discovering an optimum value of a result-effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

3. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over LaMora in view of Deters (US 5901874). With respect to the claim, LaMora discloses the claimed invention except for the container including a front wall having a door. However, Deters teaches a dumpster container wherein the front wall of the dumpster (16) has a sliding door (38) so as to provide increased access to the interior of the container, moreover to provide access to container for those of a handicapped disposition. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the front wall of LaMora to have a door structure as taught by Deters so as to provide

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increased access to the interior of the container, moreover to provide access to container for those of a handicapped disposition.

### ***Response to Arguments***

4. Applicant's arguments with respect to all claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Stephen K. Cronin**  
**Primary Examiner**